



California Regional Water Quality Control Board San Diego Region



Linda S. Adams
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold
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9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

March 1, 2010

Certified Mail – Return Receipt Requested

Article Number: 7008 1140 0002 4060 6944

In reply refer to:

733426: jebesen

**Bill Poole
Marina Cortez
1880 Harbor Island Drive
San Diego, CA 92101**

SUBJECT: Action on Request for Clean Water Act Section 401 Water Quality Certification for the Marina Cortez Marina Replacement and Slope Protection Water Quality Certification No. 09C-011

Dear Mr. Poole:

Enclosed find Clean Water Act Section 401 Water Quality Certification (Certification) for discharge to waters of the U.S. for the Marina Cortez Marina Replacement and Slope Protection project. A description of the project and location can be found in the project information sheet, location map, and site maps, by the California Regional Water Quality Control Board, San Diego Region (Regional Board), which are included as Attachments 1 through 4.

Any petition for reconsideration of this Certification must be filed with the State Water Resources Control Board within 30 days of certification action (23 CCR § 3867). If no petition is received, it will be assumed that you have accepted and will comply with all the conditions of this Certification.

Failure to comply with all conditions of this Certification may subject you to enforcement actions by the Regional Board, including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

California Environmental Protection Agency

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The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

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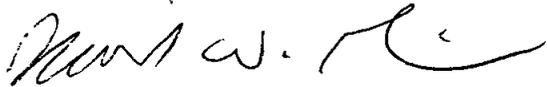
Bill Poole, Marina Cortez Marina
Replacement and Slope Protection
401 Certification 09C-011

- 2 -

March 1, 2010

In the subject line of any response, please include the requested "In reply refer to:" information located in the heading of this letter. For questions pertaining to the subject matter, please contact Ms. Jody Ebsen directly at 858-636-3146 or by email via jebsen@waterboards.ca.gov.

Respectfully,



DAVID W. GIBSON
Executive Officer

Enclosure: Clean Water Act Section 401 Water Quality Certification No. 09C-011 for Marina Cortez Marina Replacement and Slope Protection project, with 4 attachments

cc: Refer to Attachment 2 of Certification 09-011 for Distribution List.

Tech Staff Info & Use	
File No.	09C-011
WDID	9000001893
Reg. Measure ID	361140
Place ID	733426
Party ID	499385

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California Environmental Protection Agency



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Acting Secretary for
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Action on Request for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials

PROJECT: Maintenance Dredging, 09C-011
WDID Number 9 000001893

APPLICANT: Bill Poole
Marina Cortez
1880 Harbor Island Drive
San Diego, CA 92101

CIWQS
Reg. Mes. ID: 361140
Place ID: 733426
Party ID: 499385

ACTION:

<input checked="" type="checkbox"/> Order for Low Impact Certification	<input type="checkbox"/> Order for Denial of Certification
<input type="checkbox"/> Order for Technically-conditioned Certification	<input type="checkbox"/> Waiver of Waste Discharge Requirements
<input checked="" type="checkbox"/> Enrollment in SWRCB GWDR Order No. 2003-017 DWQ	<input type="checkbox"/> Enrollment in Isolated Waters Order No. 2004-004 DWQ

PROJECT DESCRIPTION:

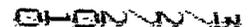
A new dock system at Marina Cortez, along Harbor Island in San Diego Bay, will be installed to replace an existing severely aged dock. The new dock area will result in an overall reduction of existing shade impacts by 19,304 square feet. Of the existing 267 piles, 179 will remain in place and 88 will be relocated. The project also includes planting along the shoreline with native vegetation for erosion protection.

STANDARD CONDITIONS:

The following three standard conditions apply to all Certification actions, except as noted under Condition 3 for denials (Action 3).

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to

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section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).

2. This Certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial Certification action (Actions 1 and 2) must be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

ADDITIONAL CONDITIONS:

In addition to the three standard conditions, Marina Cortez must satisfy the following:

A. GENERAL CONDITIONS:

1. This certification is only valid if the project begins no later than five years from the date of issuance of Water Quality Certification 09C-011 (Certification). If the project has not begun within five years then this Certification expires.
2. Marina Cortez must, at all times, fully comply with the engineering plans, specifications and technical reports submitted to the California Regional Water Quality Control Board, San Diego Region (Regional Board), to support this 401 Water Quality Certification (Certification) and all subsequent submittals required as part of this Certification and as described in Attachment 1. The conditions within this Certification must supersede conflicting provisions within such plans submitted prior to the Certification action. Any modifications thereto, would require notification to the Regional Board and reevaluation for individual Waste Discharge Requirements and/or Certification amendment.
3. During construction, Marina Cortez must maintain a copy of this Certification at the project site so as to be available at all times to site personnel and agencies.
4. Marina Cortez must permit the Regional Board or its authorized representative at all times, upon presentation of credentials:
 - a. Entry onto project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.

04-01-11

- b. Access to copy any records required to be kept under the terms and conditions of this Certification.
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Certification.
 - d. Sampling of any discharge or surface water covered by this Order.
5. Marina Cortez must notify the Regional Board within 24 hours of any unauthorized discharge, including hazardous or toxic materials, to waters of the U.S. and/or State; measures that were implemented to stop and contain the discharge; measures implemented to clean-up the discharge; the volume and type of materials discharged and recovered; and additional best management practice (BMPs) or other measures that will be implemented to prevent future discharges.
6. Marina Cortez must, at all times, maintain appropriate types and sufficient quantities of materials onsite to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the U.S. and/or State.
7. This Certification is not transferable in its entirety or in part to any person except after notice to the Executive Officer of the Regional Board in accordance with the following terms.
 - a. Transfer of Property Ownership: Marina Cortez must notify the Regional Board of any change in ownership of the project area. Notification of change in ownership must include, but not be limited to, a statement that Marina Cortez has provided the purchaser with a copy of the Section 401 Water Quality Certification and that the purchaser understands and accepts the certification requirements and the obligation to implement them or be subject to liability for failure to do so; the seller and purchaser must sign and date the notification and provide such notification to the Executive officer of the Regional Board within **10 days** of the transfer of ownership.
8. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation must be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.
9. In response to a suspected violation of any condition of this Certification, the Regional Board may require the holder of any permit or license subject to this Certification to furnish, under penalty of perjury, any technical or monitoring

reports the Regional Board deems appropriate, provided that the burden, including costs, of the reports must bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

10. In response to any violation of the conditions of this Certification, the Regional Board may add to or modify the conditions of this Certification as appropriate to ensure compliance.
11. Marina Cortez and successor owners must submit annual progressive reports to the Regional Board prior to August 1 of each year following the issuance of this Certification until the project has reached completion.

B. PROJECT CONDITIONS:

1. Prior to the start of the project, and annually thereafter, Marina Cortez must educate all personnel on the requirements in this Certification, pollution prevention measures, spill response, and BMP implementation and maintenance.
2. Marina Cortez must comply with the requirements of State Water Resources Control Board Water Quality Order No. 2003-0017-DWQ, Statewide General Waste Discharge Requirements for discharges of dredged or fill material that have received State Water Quality Certification. These General Waste Discharge Requirements are accessible at:
http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/general_orders/go_wdr401regulated_projects.pdf.
3. Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the United States and/or the State or placed in locations that may be subjected to storm flows.
4. Substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each project activity involving hazardous materials.

C. PHOTO DOCUMENTATION PROCEDURE

1. The Marina Cortez, and its successors, must conduct photo documentation of the project site, including all areas of permanent and temporary impact, prior to and after project construction.

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D. REPORTING:

1. All information requested in this Certification is pursuant to California Water Code (CWC) section 13267. Civil liability may be administratively imposed by the Regional Board for failure to furnish requested information pursuant to CWC section 13268.
2. All reports and information submitted to the Regional Board must be submitted in both hardcopy and electronic format. The preferred electronic format for each report submission is one file in PDF format that is also Optical Character Recognition (OCR) capable.
3. The Marina Cortez must submit a report to the Regional Board within 30 days of completion of the project. The report should include as-built drawings no bigger than 11" x 17" and photo documentation of the completed project including post-construction BMPs.
4. All applications, reports, or information submitted to the Regional Board must be signed and certified as follows:
 - a. For a corporation, by a responsible corporate officer of at least the level of vice president.
 - b. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.
 - c. For a municipality, or a state, federal, or other public agency, by either a principal executive officer or ranking elected official.
5. A duly authorized representative of a person designated in Items 4.a. through 4.c. above may sign documents if:
 - a. The authorization is made in writing by a person described in Items 4.a. through 4.c. above.
 - b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity.
 - c. The written authorization is submitted to the Regional Board Executive Officer.
6. All applications, reports, or information submitted to the Regional Board must be signed and certified as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

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7. The Marina Cortez must submit reports required under this Certification, or other information required by the Regional Board, to:

Executive Officer
 California Regional Water Quality Control Board
 San Diego Region
 Attn: 401 Certification; Project No. 09C-011
 9174 Sky Park Court, Suite 100
 San Diego, California 92123

8. Required Reports: The following list summarizes the reports, excluding spill notifications and emergency situations, required per the conditions of this Certification to be submitted to the Regional Board.

Report Topic	Certification Condition	Due Date(s)
Unauthorized Discharge Notification	A.5	Within 24 hours of the unauthorized discharge
Final Report	H.3	Within 30 days of completion of the project

PUBLIC NOTIFICATION OF PROJECT APPLICATION:

On February 11, 2009 receipt of the project application was posted on the Regional Board web site to serve as appropriate notification to the public.

REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

Jody Ebsen
 California Regional Water Quality Control Board, San Diego Region
 9174 Sky Park Court, Suite 100
 San Diego, CA 92123
 858-636-3146
 jebsen@waterboards.ca.gov

09C-011-11

WATER QUALITY CERTIFICATION:

I hereby certify that the proposed discharge from the Marina Cortez Marina Replacement and Slope Protection Project (Project No. 09C-011) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have Received State Water Quality Certification (General WDRs)," which requires compliance with all conditions of this Water Quality Certification. Please note that enrollment under Order No. 2003-017 DWQ is conditional and, should new information come to our attention that indicates a water quality problem, the Regional Board may issue waste discharge requirements at that time.

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' project description and/or on the attached Project Information Sheet, and (b) on compliance with all applicable requirements of the Regional Board's Water Quality Control Plan (Basin Plan).



DAVID W. GIBSON
Executive Officer

3/1/2010
Date

- Attachments:
1. Project Information
 2. Distribution List
 3. Location Map
 4. Site Map

09C-011

**ATTACHMENT 1
PROJECT INFORMATION**

Applicant: Bill Poole
Marina Cortez
1880 Harbor Island Drive
San Diego, CA 92101
Telephone: 619-291-5985

Project Name: Marina Cortez Marina Replacement and Slope Protection

Project Location: Marina Cortez, 1880 Harbor Island Drive, San Diego, CA 92101

Type of Project: Marina replacement and slope protection

Need for Project: Replacement of severely aged docks, and protection of currently unprotected shoreline

Project Description: A new dock system at Marina Cortez, along Harbor Island in San Diego Bay, will be installed to replace an existing severely aged dock. The new dock area will result in an overall reduction of existing shade impacts by 19,304 square feet. Of the existing 267 piles, 179 will remain in place and 88 will be relocated. The project also includes planting along the shoreline with native vegetation for erosion protection.

Federal Agency/Permit: U.S. Army Corps of Engineers §404, NWP 13, Robert Smith

Other Required Regulatory Approvals: Port of San Diego, Coastal Development (categorically exempt)

California Environmental Quality Act (CEQA) Compliance: On November 30, 2007, the Port of San Diego determined that the dock replacement and the shoreline protection work at Marina Cortez was categorically exempt under CEQA, Section 15300, Existing Facilities.

Receiving Water: San Diego Bay along Harbor Island

Affected Waters of the United States: The new dock system will reduce shading affects and planting of native vegetation will be used for erosion protection of shoreline along San Diego Bay.

Dredge Volume: None

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Related Projects
Implemented/to be
Implemented by the
Applicant(s):

None

Compensatory
Mitigation:

The project as proposed will overall reduce the current dock shading from by 19,304 square feet, from 125,951 square feet to 106,647 square feet. There is also no net increase of impacts for new piles. Therefore, the impacts are considered less than significant and no mitigation is required for the new dock system. Shoreline protection will be achieved by planting with appropriate native vegetation as described in *Regional Water Quality Control Board 401 Water Quality Certification for the Marina Cortez Slope Stabilization Restoration Project*, February 2, 2010.

Best Management
Practices (BMPs):

Post construction BMPs include regular trash removal and regular maintenance activities at the new dock system.

Public Notice:

On February 11, 2009, receipt of the project application was posted on the Regional Board website to serve as appropriate notification to the public.

Fees:

Total Due: \$ 7,808.00
Total Paid: \$ 7,808.00 (check No. 11537, \$ 640.00, check No. 11664, \$7,168.000).

CIWQS:

Regulatory Measure ID: 361140
Place ID: 733426
Party ID: 499385

09C-011-11

**ATTACHMENT 2
DISTRIBUTION LIST**

Robert Smith
U.S. Army Corps of Engineers, Regulatory Branch
San Diego Field Office
Robert.R.Smith@usace.army.mil

State Water Resources Control Board, Division of Water Quality
401 Water Quality Certification and Wetlands Unit
Stateboard401@waterboards.ca.gov

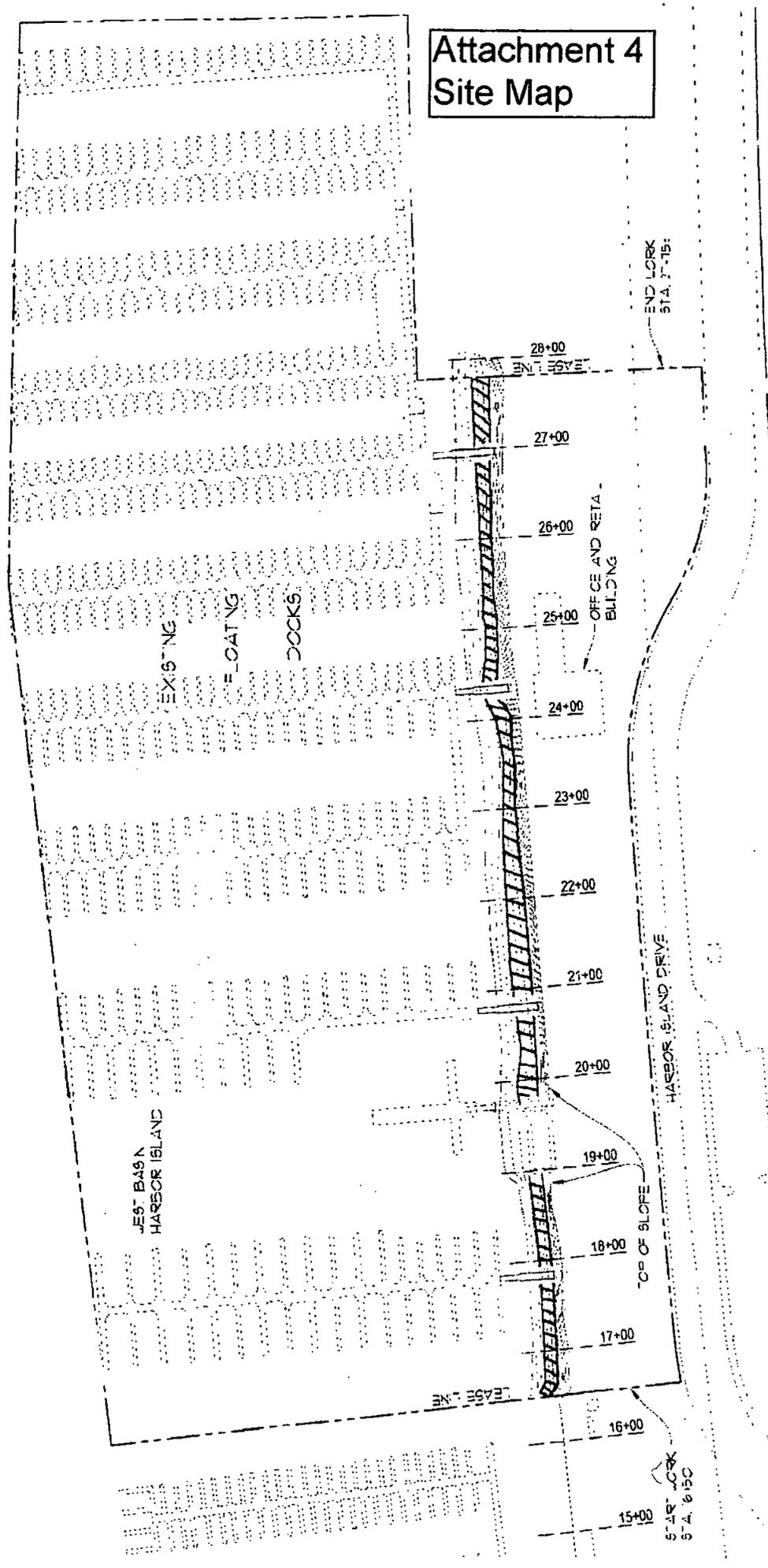
U.S. Environmental Protection Agency, Region 9
Wetlands Regulatory Office
R9-WTR8-Mailbox@epa.gov

David Zoutendyk
U.S. Department of the Interior
Fish and Wildlife Service
david_zoutendyk@fws.gov

Barry Jones
Helix Environmental
BarryJ@helixepi.com

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Attachment 4 Site Map



Slope Revegetation
Dock Replacement

SITE PLAN
SCALE: 1" = 0'-0"

WIND NOTED

ND DR

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee X</p> <p>B. Received by (Printed Name) C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p style="text-align: center;">Bill Poole MARINA CORTEZ 1880 HARBOR ISLAND DRIVE SAN DIEGO CA 92101</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p style="text-align: center;">7008 1140 0002 4060 6944</p>

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
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Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: Bill Poole, MARINA CORTEZ
 Street, Apt. No., or PO Box No. 1880 Harbor Island Drive
 City, State, ZIP+4 SAN DIEGO, CA 92101

PS Form 3800, August 2006 See Reverse for Instructions
 PS Form 3800, August 2006 See Reverse for Instructions

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